

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

EMILY H. ALEXANDER,	§	
	§	
Plaintiff,	§	Civil Action No. 1:14-cv-222-LY
	§	
v.	§	
	§	
BAXTER INTERNATIONAL INC.,	§	JURY TRIAL DEMANDED
	§	
Defendant.	§	

FIRST AMENDED COMPLAINT

The Parties

1. Plaintiff Emily H. Alexander is an individual with a business address of 503 E. Hancock, Alpine, TX 79830.
2. Upon information and belief, Defendant Baxter International Inc. (“Defendant”) is a company with its principal place of business at One Baxter Parkway, Deerfield, Illinois 60015-4625.

Jurisdiction and Venue

3. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1338 because this action is for patent infringement and arises under the Patent Laws of the United States, Title 35 of the United States Code.
4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

5. Upon information and belief, Defendant does business in the State of Texas and this Court's district and/or places goods and services in the stream of interstate commerce, knowing that its goods and/or services will arrive in the State of Texas and in this Court's district. Upon information and belief, Defendant has committed the tort of patent infringement within the State of Texas and this Court's district. Venue and jurisdiction is therefore proper.

GENERAL AVERMENTS

Plaintiff's Patent Rights

6. United States Patent No. 8,374,887 ("the '887 Patent") was duly and legally issued (the "Patent"). *See Exhibit 1.*

7. Plaintiff is the owner of all rights in and to the Patent.

8. The Patent concerns a method for remotely supervising and verifying pharmacy functions performed by a non-pharmacist at an institutional pharmacy.

Defendant and its Infringing Activities

9. Defendant is in the business of making, having made, using, selling, offering for sale, and/or importing in the United States the DoseEdge Pharmacy Workflow Manager (the "Infringing Product"). Defendant uses and induces others to use the Infringing Product so that Defendant and/or certain third parties infringe upon the methods patented in the Patent. This Infringing Product is an integrated system for managing IV and oral dose preparation activities. *See Exhibit 2.*

10. Defendant offers to sell and/or sell its Infringing Product in the state of Texas and this district. Defendant practices and induces others to practice the methods covered by the Patent in Texas and this district.

11. The activities of Defendant have been without authorization from Plaintiff.

12. On or about December 17, 2013, Plaintiff's counsel sent Defendant a letter providing a copy of the Patent, an explanation of the what the patent covers, an identification of the Infringing Product, and a request that Defendant respect Plaintiff's intellectual property rights in and to the Patent. Defendant did not respond to the letter and continues to make, have made, use, sell, offer for sale and import the Infringing Product in the United States. *See Exhibit 3.*

COUNT I - PATENT INFRINGEMENT

13. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 12 of this Complaint as if fully set forth herein.

14. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code.

15. Defendant has infringed and continues to infringe the Patent under 35 U.S.C. § 271 *et seq.*, either literally or under the doctrine of equivalents. This infringement was and is willful and intentional.

16. Defendant has, without authority, consent, right or license, and in direct infringement of the Patent, made, used, sold, offered to sell, and/or imported the Infringing Product in this country and practiced the methods set forth in the Patent in this Country, and, upon information and belief, such Infringing Product have been offered for sale, sold, and used and such methods have been practiced in the state of Texas and this district.

17. Defendant's infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

COUNT II - INDUCEMENT OF PATENT INFRINGEMENT

18. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 17 of this Complaint as if fully set forth herein.

19. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code, in particular under 35 U.S.C. § 271(b).

20. Defendant has, in this country, actively and/or intentionally induced others to use products that infringe the Patent and practice the methods taught in the Patent, and, upon information and belief, have induced others to use products that infringe the Patent and practice such methods in the state of Texas and in this district.

21. Defendant's infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

COUNT III - CONTRIBUTORY PATENT INFRINGEMENT

22. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 21 of this Complaint as if fully set forth herein.

23. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code.

24. Defendant is furthermore liable for contributory infringement, pursuant to 35 U.S.C. § 271(c), in that Defendant has made, imported and/or sold within the United States a component of a patented machine, manufacture, composition, combination, or system, and/or a

material or apparatus for use in practicing a patented process, including a material part of the invention, knowing the same to be especially made or adapted for use in the infringement of the Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use, and, upon information and belief, have done such activities in the state of Texas and in this district.

25. Defendant's infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

DAMAGES

26. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 25 of this Complaint as if fully set forth herein. Plaintiff has suffered, is suffering, and will continue to suffer irreparable harm and injury as a result of Defendant's aforesaid activities. Defendant will, unless restrained and enjoined, continue to act in the unlawful manner complained of herein, all to Plaintiff's irreparable damage. Plaintiff's remedy at law is not adequate to compensate it for the injuries suffered and threatened. By reason of Defendant's acts complained of herein, Plaintiff has suffered monetary damages in an amount that has not yet been determined.

REQUEST FOR JURY TRIAL

27. Plaintiff hereby demands that this cause be tried by a jury.

PRAYER

28. WHEREFORE, Plaintiff demands:

A. That Defendant and its agents, officers, directors, employees, servants, representatives, customers, privies, successors and assigns, and all holding by, through or under Defendant, and all those acting for or on the behalf of Defendant, or in active concert, participation, or combination with Defendant, be enjoined and restrained, immediately and preliminarily (i.e., a temporary restraining order, preliminary injunction, and/or permanent injunction as deemed appropriate by the Court), during the pendency of this action and permanently thereafter from, in the United States:

- (1) making, using, offering to sell, selling and/or importing the infringing products, or any colorable imitation thereof,
- (2) inducing others from infringing the Patent, and/or contributing to the infringement of the Patent by others; and
- (3) otherwise infringing upon the Patent.

B. That this Court order Defendant and its agents, officers, directors, employees, servants, representatives, customers, privies, successors and assigns, and all holding by, through or under Defendant, and all those acting for or on the behalf of Defendant, or in active concert, participation, or combination with Defendant, to deliver up to this Court, and to permit the seizure by Officers appointed by the Court of all articles and materials infringing upon the rights of Plaintiff, and particularly, without limitation, all products and materials which embodies or includes the infringing products and materials, and to be delivered up for destruction on the issuance of a final Order in this action, including all infringing products and materials, and Defendant submit in writing, under oath, a description of all actions taken to comply with this portion of the Order.

C. That Defendant be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendant's infringement of the Patent.

D. That, in the alternative, a reasonable royalty be awarded to Plaintiff pursuant to 35 U.S.C. § 284.

E. That Defendant be ordered to account for and pay over to Plaintiff all their respective gains, profits and advantages derived from the infringement of the Patent or such damages as to the Court shall appear proper within the patent laws.

F. That Defendant be ordered to pay Plaintiff enhanced damages (*e.g.*, treble damages).

G. That Defendant be ordered to pay to Plaintiff the costs of this action, prejudgment interest, and post-judgment interest.

H. That this case be found to be exceptional.

I. That Defendant be ordered to pay Plaintiff's reasonable attorneys' fees, experts' fees, and costs.

J. That Plaintiff be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Ryan T. Beard

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2014, I electronically filed the foregoing pleading with the clerk of court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the court.

/s/ Ryan T. Beard